

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 2-3, 5-7, 9-10, 13, 18 and 22-23 are currently being amended

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Current Claim Amendments

The current amendments make minor changes of form, and are not entered for reasons relating to patentability. Entry of the amendments after final is thus respectfully requested.

The Claims Have Written Description Support

The office action rejected claims 2-13, 18, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, for lack of written description. Applicants respectfully submit that the referenced claims are supported under 35 U.S.C. 112, and request reconsideration.

As the Examiner correctly notes, the test for assessing whether the specification provides written description support for claim language is whether a person of skill in the art would appreciate that the inventors had possession of the referenced feature. Although the claim language is not present verbatim in the specification, there can be little doubt that a person of skill in the art would have understood the disclosed packing case defined "a fixed open space for housing the batteries".

Support for this feature is found in the specification at page 7, and shown in Figs. 1, 4, and 6, for example. The packing case (3) of the preferred embodiment has flanges (35) which serves as spacers to leave spaces S between the battery units (2) adjacent to each other in the stacked direction. If one skilled in the art looks at this disclosure, he will naturally understand that the walls (31, 32, 33) of the packing case (3) between the flanges (35) are

rigid enough to maintain the spaces S. Therefore, it is properly disclosed that the packing case defines a fixed open space for housing the battery/batteries.

The Claims Are Patentable Over The Cited Prior Art

The office action rejected claims 2-4, 6, 8, 9, 13, 18 and 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,870,235 ("Soltis"), Claims 2-4, 6-9, 13, 18, 22 and 23 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,844,841 ("Baker"), claim 5 under 35 U.S.C. 103(a) over Soltis in view of in view of U.S. Pat. No. 6,821,671 ("Hinton"), claim 7 under 35 U.S.C. 103(a) over Soltis in view of U.S. Pat. No. 5,688,615 ("Mrotek"); Claims 10, 11 and 13 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,773,848 ("Nortoft") in view of U.S. Pat. No. 5,445,856 ("Chaloner-Gill), and claim 12 under 35 U.S.C. 103(a) over Nortoft in view of Chaloner-Gill further in view of U.S. Pat. No. 5,879,831 ("Ovshinsky").

Applicants submit that the rejections are improper and request reconsideration.

Soltis 102(b)

With regard to the rejection of claims 2-4, 6, 8, 9, 13, 18 and 22 and 23 under 102(b) over Soltis, Soltis's cell consists of metal anode sheet 10, separator 12, depolarizer 14, cathode collector 16, metal foil 18, insulating wrapper 20, and tabs 162, 166 (see, col. 2 lines 31-44, col. 4 lines 18-28, Figs. 1 and 17-19). If any of the above-mentioned elements is missing from the cell, then the cell is not designed to ultimately function as a battery. Therefore, it is improper to assert that only a subset of these elements meets the term "battery" in the present claims. For example, a combination of the anode 10, separator 12, depolarizer 14, cathode collector 16, and tabs 162, 166, excluding the metal foil 18, cannot be called a battery.

Soltis is further silent on the packing case for housing the cell and the opening thereof as claimed in claim 13.

Thus, Soltis does not anticipate claims 2-4, 6, 8, 9, 13, 18 and 22 and 23, because it does not teach all elements of those claims as required by MPEP § 2133.

Soltis and Hinton or Mrotek 103(a)

At least for similar reasons, the rejections of claims 5 and 7 over Soltis in view of Hinton and Mrotek respectively are improper, because the combination of Soltis with Hinton or Mrotek does not teach all elements of claims 5 and 7 and the claims from which they depend. *See* MPEP § 2143.

Baker 102(b)

With regard to the rejection of claims 2-4, 6-9, 13, 18, 22 and 23 under 35 U.S.C. 102(b) over Baker, Baker fails to disclose the opening of the packing case as recited in claim 13. The office action simply states that the opening is disclosed as visible from Figs. 1-3, 6 and 7, but it is unclear where. Baker's housing member 14 constitutes modular battery 10 and houses the battery cell 40 therein, however, it does not have an opening that is at one side of the modular battery 10, where the side is defined by the stacking direction. (Note that Fig. 2 of Baker is a longitudinal sectional view of the modular battery 10.).

Baker further fails to disclose a battery having a power generating element sealed in a film. In Baker's battery cell 40, the power generating element (positive and negative electrodes 42 and 44, electrolyte layer 46, and conductor foils 48 and 50) is exposed from between insulating layers 52 and 54 (see Fig. 7).

Thus, Baker does not anticipate claims 2-4, 6, 8, 9, 13, 18 and 22 and 23, because it does not teach all elements of those claims as required by MPEP § 2133.

Nortoft 103(a)

With regard to the rejections of claims 10, 11, 12 and 13 under Nortoft in view of other references, the office action found that Nortoft teaches the basic structure of the battery module of claim 13, minus the laminate, which teaching was supplied by Chaloner-Gill.

Respectfully, Nortoft fails to teach all of the aspects of claim 13 for which it was cited. Specifically, Nortoft is directed to a pair of batteries that can be stacked and connected by tabs. Nortoft does not, however, teach the packing case of claim 13 or any of the elements in the "packing case" paragraph of claim 13.

Nortoft is silent on the packaging of its electrochemical cells. As pointed out in the office action, Nortoft states that the structure is not relevant, but may be as provided in Chaloner-Gill. The office uses this statement to combine the laminate teaching of Chaloner-Gill with Nortoft. Even if a teaching of Chaloner-Gill meets the “sealed in a film” aspect of claim 13, however, this still leaves the “packaging case” element of claim 13. That is, if the “structure” of Nortoft is the laminate of Chaloner-Gill, then Nortoft does not disclose the outer packaging element of claim 13.

Correspondingly, Nortoft does not teach the “fixed open space” element of claim 13, the “opening” in the packaging case, or the exposure of the electrode tabs. Rather, Nortoft as modified by Chaloner-Gill teaches at most the the first and second body elements of claim 13.

Because not all elements of claim 13 are found in the proposed combination, the office action does not establish a *prima facie* case for obviousness. See MPEP § 2143.

Claims 10-12 are dependent on claim 13 and patentable for at least the same reasons.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By

A handwritten signature in dark ink, appearing to read 'Paul D. Strain', is written over a horizontal line.

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